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May 19, 2000

**VIA COURIER**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Room TW-B-204  
Washington, D.C. 20554

Re: Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas, CC Docket No. 00-65

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding pursuant to the Commission's April 6, 2000 Public Notice Requesting Comments are an original, six paper copies, and a diskette copy of the Reply Comments of RCN Telecom Services, Inc.

Please date stamp and return the enclosed extra copy of this filing in the self-addressed, postage prepaid envelope provided. Should you have any questions concerning this filing, please do not hesitate to call us.

Respectfully submitted,



Harisha J. Bastiampillai

Enclosures

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Application by SBC Communications Inc.,  
Southwestern Bell Telephone Company, and  
Southwestern Bell Communications Services,  
Inc. d/b/a/ Southwestern Bell Long Distance  
for Provision of In-Region, InterLATA  
Services in Texas

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CC Docket No. 00-65

REPLY COMMENTS OF  
RCN TELECOM SERVICES, INC.

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## **SUMMARY**

Almost as crucial as the first Order of the Commission granting a regional Bell Operating Carrier in-region, interLATA authority pursuant to Section 271 of the Communications Act is the next FCC order evaluating a Section 271 application. The industry and interested observers will be awash in anticipation over whether the first Section 271 grant will open the floodgates of RBOC entry into the long distance market, or whether the Commission will continue to maintain high standards for a Section 271 grant.

The aspect of SBC's application dealing with its performance on hot cuts is a microcosm of all the crucial issues that surround this proceeding. SBC has submitted successive rounds of data on its hot cut performance in the hope that it can convince the Commission that it is meeting the applicable standards in regard to hot cut performance. SBC has failed to show, however, that it has cleared the bar set by this Commission in its Order granting Bell Atlantic Section 271 authority.

SBC and the Texas Public Utility Commission advocate a lowering of the bar to meet SBC's performance. CLEC commenters advocate maintaining the bar at its present level or even raising it. This Commission, in evaluating SBC's hot cut performance, will send a clear message as to how future Section 271 applications will be considered. We urge the Commission to remain steadfast in its requirement that RBOCs demonstrate in their provisioning of hot cuts a meaningful opportunity to compete. Hot cuts are already an important factor in competitive entry into local markets, and will become even more important as CLECs develop more of their own facilities. The performance of a cutover will impact the service of an end user, and how the end user perceives its new carrier. The seamlessness of a cutover will go a long way to determining

if a customer stays with the incumbent or goes to the new competitor. In short, the flash of the cutover sews the threads of competition.

RCN urges this Commission to maintain high standards of performance for RBOCs not only on the issue of hot cuts, but in regard to all the checklist items. The grant of section 271 authority still provides the most powerful incentive for the RBOCs to remove obstacles to the development of local competition. The Commission should ensure that the Section 271 standards remain meaningful.

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services,	)	CC Docket No. 00-65
Inc. d/b/a/ Southwestern Bell Long Distance	)	
for Provision of In-Region, InterLATA	)	
Services in Texas	)	

**REPLY COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel and pursuant to the Commission's *Public Notice* (dated April 26, 2000), submits these Reply Comments concerning the above-captioned application ("Application") of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance (collectively "SBC") as supplemented by additional information by SBC on April 5, 2000. For the reasons, stated below and in RCN's Comments filed April 26, 2000, the Commission should deny SBC's application to offer interLATA service in Texas.

**I. SBC IS STILL NOT IN COMPLIANCE WITH THE COMPETITIVE CHECKLIST IN REGARD TO HOT CUTS**

SBC is like the proverbial Casey at Bat when it comes to hot cut performance, except this time Casey has been given an unlimited amount of swings with which to clear the fence. In this case, the fence is the standards set for hot cut performance in the Order of the Commission granting Bell Atlantic authority to provide in-region, interLATA service in the State of New

York.<sup>1</sup> Despite an unlimited amount of attempts to meet the standards, SBC has still not succeeded. The data on hot cut performance it submitted with its initial application fell woefully short. As the Department of Justice noted, “SBC’s performance with regard to ‘hot cuts’ is worse than Bell Atlantic’s performance in New York, which the Commission concluded was ‘minimally acceptable.’”<sup>2</sup>

Undaunted, SBC filed new data on hot cut performance in its supplemental application filed on April 5, 2000.<sup>3</sup> The data did not demonstrate compliance with the standard set in the *Bell Atlantic New York Order*. As the Department of Justice observed:

[w]hen SBC filed its Texas II application on April 5, 2000, the record in Texas II, including the supplemental affidavits, was not substantially different from the record available in Texas I at the time the Department filed its March 20, 2000 ex parte submission. Consequently, the Department’s evaluation of SBC’s Texas II application as filed would have been the same as our evaluation of its Texas I application.<sup>4</sup>

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<sup>1</sup> Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295 (released December 22, 1999)(“*Bell Atlantic New York Order*”)

<sup>2</sup> February 14, 2000 Evaluation of the United States Department of Justice, p. 27.

<sup>3</sup> *Ex Parte* Submission from SBC Communications, Inc. to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-4, at pp. 8-11 (Apr. 5, 2000).

<sup>4</sup> May 12, 2000 Evaluation of United States Department of Justice, p. 3.

Having swung twice and missed, SBC submitted new hot cut performance data on April 25, 2000.<sup>5</sup> As a preliminary matter, there is a definite question as to the propriety of repeatedly supplementing the data supporting a Section 271 application. The Commission has stated that it expects a section 271 application to be complete when filed, *i.e.*, that it will “include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon.”<sup>6</sup> Applicants are allowed to submit new data to rebut arguments made, or facts submitted,<sup>7</sup> but that is clearly not SBC’s intent in regard to this repeated flurry of data. SBC is not shoring up an argument; it is instead attempting to craft compliance with a vital competitive checklist requirement after the fact. SBC’s data was never in conformance with the standards for hot cuts, and for this reason, its application was prematurely filed. SBC’s second and third rounds of data, with a fourth anticipated,<sup>8</sup> have not demonstrated that SBC is meeting the performance standards in regard to hot cuts.<sup>9</sup>

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<sup>5</sup> *Ex Parte* Submission from Austin C. Schlick to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 00-65 (April 25, 2000).

<sup>6</sup> Public Notice, *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, DA-99-1994, 1999 WL 766282 (F.C.C.)(Sept. 28, 1999).

<sup>7</sup> *Id.*

<sup>8</sup> See May 12, 2000 Evaluation of U.S. Department of Justice, p. 3 (Expecting that SBC will again augment the record with new performance data around May 20, 2000).

<sup>9</sup> If the new SBC data does show that hot cut performance standards were met for the month of April the Commission should still defer on any definitive determination of checklist compliance until a consistent, continued pattern of compliant hot cut performance is shown.



The Commission should put an end to these repeated “supplements” by denying SBC’s application outright based on noncompliance with the checklist. If the Commission decides to consider these supplemental filings then it should exercise its right to start the 90-day review process anew beginning with the date that SBC submits its April performance data.<sup>10</sup>

The preferred course of action would be to deny SBC’s application on the basis of its failure to comply with section 271(c)(2)(B)(iv) of the Telecommunications Act by not furnishing loops at an acceptable level of quality.<sup>11</sup> There are three essential performance standards, as articulated by the Commission, in regard to hot cut performance. The first is on-time hot cut performance. For orders of fewer than ten lines, the RBOC has one hour in which to complete the coordinated cutover and report the completion of the hot cut to the competing carrier.<sup>12</sup> The Commission stated that on-time hot cut performance at level of 90 percent or greater is sufficient to permit carriers to enter and compete in a meaningful way in the local exchange market.<sup>13</sup>

The second performance standard pertains to installation troubles reported on the lines provisioned through hot cuts. The Commission found the applicable standard to be that a competitor should report installation trouble reports on fewer than 2% of their lines provisioned

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<sup>10</sup> As Sprint has noted, “SBC’s hot cut data has been restated, updated or corrected several times in these proceedings, creating a moving target that has, in several instances, included erroneous information.” April 26, 2000 Sprint Petition to Deny, p. 27.

<sup>11</sup> *Bell Atlantic New York Order*, ¶ 269.

<sup>12</sup> *Id.* at ¶ 292.

<sup>13</sup> *Id.* at ¶ 298.

within seven days of installation.<sup>14</sup> Finally, the Commission determined that fewer than 5% of a competitor's customers should experience service outages as a result of RBOC-caused errors.<sup>15</sup>

The Commission will consider all these factors in combination in determining an applicant's compliance in regard to hot cuts. The Commission sternly noted:

[f]inally, we emphasize that although we consider Bell Atlantic's demonstrated on-time hot cut performance at rates at or above 90 percent, in combination with the evidence indicating that fewer than five percent of hot cuts resulted in service outages and that fewer than two percent of hot cut lines had reported installation troubles to be sufficient to establish compliance with the competitive checklist, we view this as a minimally acceptable showing. We would thus have serious concerns if the level of performance in any one of these three measures were to decline and would be prepared, in that event, to take whatever enforcement action is warranted.<sup>16</sup>

SBC fails to produce even in this minimally acceptable showing. The data it submits shows shortcomings in all three of the vital performance standards.

There are some preliminary comments that need to be made about the data prior to evaluating the data under the standard set by *Bell Atlantic New York Order*. One, the Texas Public Utility Commission ("Texas PUC") established different performance metrics to track hot cut performance. There are three primary performance metrics that the Texas PUC utilizes. The first is PM 114 which measures the percentage of unbundled loop conversions where SWBT prematurely disconnects the customer prior to the scheduled conversion. The Texas PUC

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<sup>14</sup> *Id.* at ¶ 300.

<sup>15</sup> *Id.* at ¶ 302.

<sup>16</sup> *Id.* at ¶ 309.

benchmark for PM 114 is less than 2% premature disconnects within 10 minutes of the scheduled start time.<sup>17</sup> PM 114.1 measures the coordinated cut over interval on orders for 1-24 loops. The Texas PUC interim benchmark is that 100% of these cutovers are to completed within two hours of the scheduled start time.<sup>18</sup> The third metric, PM 115, measures the percentage of SWBT-caused delayed coordinated cutovers. Under the Texas PUC benchmark, no more than 8% of coordinated cutovers are to be delayed more than 30 minutes, no more than 2% are to be delayed more than one hour and no more than 1% should be delayed over two hours from the scheduled start time.<sup>19</sup> The Texas PUC concedes that the difference in the metrics from the ones utilized in the *Bell Atlantic New York Order* makes comparisons difficult.

This difference is exacerbated by the fact that the performance metrics (“PMs”) are based on unbundled loop conversions as opposed to the orders-based approach utilized in the *Bell Atlantic New York Order*. While this standard was set before the FCC’s Order, the data is still being processed in terms of loops. The reason for this appears solely due to SBC’s indicated inability to track performance data based on orders without manual manipulation of the data.<sup>20</sup> CLECs have acquiesced to use of performance measures based on loops solely to allow for the

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<sup>17</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at p. 12.

mechanized promulgation of performance data.<sup>21</sup> CLECs have, however, disputed the application of the same benchmarks for both loops and orders, and rightfully so, since use of loops as opposed to orders likely overstates SBC's performance.<sup>22</sup> The Texas PUC attempts to defend the use of imprecise data by stating that use of loops "more accurately reflect customers' dissatisfaction when their service is provisioned poorly (*i.e.*, customers will likely be more upset if they suffer an outage of 9 lines out of a 10 line order versus 1 line out of 10 lines) . . . ."<sup>23</sup> Disregarding how quixotic any attempt at gauging relative customer dissatisfaction would be, particularly given the fact that a customer would be mighty upset over any line that suffered outages, the Texas PUC misses the point. The standard is not how dissatisfied the customer is, the standard is the quantity and quality of SBC's loop provisioning, and whether this provisioning provides a meaningful opportunity to compete. Thus, any use of performance metrics that does not accurately reflect SBC's performance, but, in fact, overstates it, should be rejected.

Another difference in the data vis-a-vis the Bell Atlantic application is that SBC's application has data reflecting two hot cut processes, coordinated hot cuts ("CHC") and frame

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<sup>21</sup> *Id.*

<sup>22</sup> March 20, 2000 U.S. Department of Justice *Ex Parte* Letter at p. 9.

<sup>23</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 12.

due time (“FDT”).<sup>24</sup> Bell Atlantic only used coordinated hot cuts. As will be shown *infra*, the data for both processes reveal shortcomings in performance, but the FDT data is particularly deficient. For this reason, the Texas PUC attempts to shift the focus of this Commission to the CHC data by concentrating on the CHC data.<sup>25</sup> The Texas PUC argues that the CHC data is more indicative of SBC’s performance. The Texas PUC adds that:

[a]lthough the Texas Commission recognizes the importance of having reliable provisioning of hot cuts regardless of the method used, the Texas Commission does not believe SWBT’s application should succeed or fail based on its FDT performance. Doing so will discourage other RBOCs from developing new systems or processes, even if such systems or processes may ultimately be more efficient, just before the pendency of their 271 application.<sup>26</sup>

The problem with the Texas PUC’s perspective on the FDT process is that SBC is not only encouraging CLECs to use the FDT process, but in many cases requiring use of the process.<sup>27</sup> In fact, SBC may charge a premium if CLECs use the CHC process.<sup>28</sup> Recent data

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<sup>24</sup> February 14, 2000 U.S. Department of Justice Evaluation at 29. SBC uses two hot cut processes. One is fully coordinated hot cut (“CHC”) process which is to be used for conversions of orders of twenty or more lines. These orders are manually processed and require intensive coordination and communication between SBC and the CLEC. Thus, they are performed outside of normal business hours. FDT cuts are used for cuts of fewer than 20 lines and are performed during normal business hours since they can be processed without the manual intervention of SBC representatives. *Id.* at 27.

<sup>25</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission at p. 14.

<sup>26</sup> *Id.*

<sup>27</sup> February 14, 2000 Evaluation of the U.S. Department of Justice, p. 28.

<sup>28</sup> *Id.*

bears out the fact that CLECs increasingly rely on the FDT method for unbundled loop cutovers, and that they will likely do so in the future since many of the CHC hot cuts could be done using the FDT process.<sup>29</sup> Thus, if anything, SBC's hot cut performance should stand or fall based on its FDT performance, since FDT hot cuts seem to be the present and future of hot cuts in Texas.

The Texas PUC's supposition that a different benchmark should be used for FDT is equally unsupported.<sup>30</sup> No indication is given as to why SBC should not be held to the same standards for FDT hot cuts as for CHC hot cuts. Since FDT orders are to be used for smaller orders and are more mechanized, SBC should be able to meet the performance standards articulated in the *Bell Atlantic New York Order*. There is no inherent distinguishing feature of FDT orders that would suggest the need for a lower benchmark. This is particularly true when SBC is encouraging the use of FDTs. The Texas PUC is currently determining if there is a need to alter the benchmarks for FDT hot cuts.<sup>31</sup> If there is such a need, the appropriate solution is to put SBC's application on hold until the new benchmark is developed, and its deficient FDT performance can be justified. The solution is not to grant its application when data shows that it is failing to provide adequate hot cut performance in an increasingly important hot cut process such as FDT.

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<sup>29</sup> April 26, 2000 Sprint Petition to Deny, p. 30.

<sup>30</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 14.

<sup>31</sup> *Id.* at 13.

The new data submitted by SBC and the Texas PUC includes some data reconciled by the SBC with the CLECs. This was done to counter the claims that SBC's data was flawed. Most CLECs did not reconcile data leaving the reconciled sample much smaller than the original population of data.<sup>32</sup> Thus, the worth of the "reconciled" data is somewhat limited. The reconciliation AT&T conducted with SBC was much more extensive, and much more analogous to the approach utilized in the *Bell Atlantic New York Order*.<sup>33</sup> That data showed that from December 1999 to February 2000, SBC caused outages on 16.7% of AT&T's orders. This rate is more than three times higher than in New York.<sup>34</sup> Even worse, the data shows that SBC's performance was deteriorating over time, and that it was not meeting performance standards for either CHCs or FDTs.<sup>35</sup> Thus, AT&T, a carrier that does have the resources to do a comprehensive reconciliation with SBC, and whose reconciled data with Bell Atlantic was extensively considered by the Commission,<sup>36</sup> has produced data showing that SBC's hot cut

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<sup>32</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 14. The Texas PUC seems to chide the CLECs for not reconciling data, but clearly reconciling data is an arduous process. SBC should have reported data accurately to begin with, or utilized a truly independent third party as Bell Atlantic did, especially since SBC carries the burden of proof on the data.

<sup>33</sup> April 26, 2000 Supplemental Comments of AT&T Corp., p. 29.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 29-30.

<sup>36</sup> *Bell Atlantic New York Order* at ¶ 295.

performance is not close to the minimum standard set in the *Bell Atlantic New York Order*.<sup>37</sup>

One can only imagine what a thorough reconciliation of data for other CLECs would show.

The recent data submitted by SBC and the Texas PUC does nothing to change this conclusion. SBC is not meeting crucial performance standards in regard to either CHC or FDT hot cuts.

**PM 114.1 – (Coordinated Cutover Interval on Orders of 1-24 loops)**

TX PUC Benchmark -- 100% of orders completed within two hours

Analogous Bell Atlantic New York Order standard – 90% of orders of ten loops or fewer to be completed within one hour.

Both the reconciled and reconciled plus<sup>38</sup> CHC data shows that SBC did not meet the Texas PUC's benchmark for the three reported months (December 1999, January and February 2000). In December 1999, SBC missed the benchmark on over 6% of the orders. SBC's average performance for the three months shows it missed the benchmark on nearly 4% of the orders.<sup>39</sup> For orders containing 1-10 lines, SBC did not reach the 90% standard for cutovers successfully completed within one hour, and in December and January, SBC was only completing cutovers within an hour on 86.5% and 87.3% of the orders respectively.<sup>40</sup>

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<sup>37</sup> April 26, 2000 Supplemental Comments of AT&T Corp., p. 31.

<sup>38</sup> Reconciled "plus" data includes original report data for those CLECs that did not reconcile the data as well as the reconciled data for the CLECs that did. April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 14.

<sup>39</sup> *Id.* at 15.

<sup>40</sup> *Id.* at 16.



For FDTs, on orders of 1-24 lines, SBC did not meet the TX PUC benchmark for any of the three months. In February 2000, SBC missed the benchmark on over 7.3% of the orders.<sup>41</sup> Overall for the three months, SBC missed the benchmark on nearly 6% of the orders.

**PM 114 (Conversions Where SBC Prematurely Disconnects)**

TX PUC Benchmark – Less than 2% premature disconnects within 10 minutes of scheduled start time.

Analogous BANY Order standard – outages on no more than 5% of orders

Preliminarily it should be noted that PM 114 is but a subset of the loop outage standard as it only measures outages caused by premature disconnects and does not measure all SBC-caused outages.<sup>42</sup> To truly consider outages as considered in the *Bell Atlantic New York Order*, consideration would also be paid to outages reflected by PM 114.1, *i.e.*, when SBC delays the cutover.<sup>43</sup> In February 2000, there were premature disconnects on 10.81% of the CHC orders, and for the three months combined, there were premature disconnects on 4.45% of the CHC orders.<sup>44</sup> Thus, not only is SBC not meeting the TX PUC benchmark, it exceeds the standard set in the *Bell Atlantic New York Order* of outages on no more than 5% of the orders.<sup>45</sup> For FDT

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<sup>41</sup> *Id.* at 20.

<sup>42</sup> April 26, 2000 AT&T Supplemental Comments, p. 32.

<sup>43</sup> *Id.*

<sup>44</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 18.

<sup>45</sup> SBC exceeds the 5% mark in February. Its overall 4.45% premature disconnect rate for the three months would also push it over the 5% mark when the outages reflected in PM 114.1 are factored in. *See* April 26, 2000 Supplemental Comments of AT&T Corp., p. 32.

orders, SBC likewise exceeded the TX PUC benchmark for February with 4.81% premature disconnects and missed the benchmark for its overall three month performance with 2.27% premature disconnects.<sup>46</sup>

**Trouble Reports**

BANY Order Standard – Trouble Reports on no more than 2% of orders within 7 days

While SBC is marginally compliant on this metric for CHC orders,<sup>47</sup> its performance on FDT orders is poor. SBC exceeded the 2% standard in January and February of this year, and its overall performance rate for January-March 2000 is 2.45%.<sup>48</sup> In February, SBC's trouble report rate was 3.28%.<sup>49</sup>

Thus, the new data for all three performance measures reflects the same old tale; SBC is still not meeting performance standards set by the FCC and the Texas PUC for hot cut performance, and it is not meeting performance standards regardless of which hot cut processes it utilizes. SBC is provisioning hot cuts in insufficient quantities, at an unacceptable level of quality, and with tremendous service disruption. SBC's performance on the three standards

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<sup>46</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 22.

<sup>47</sup> It should be noted that SBC's average CHC trouble report rate is 1.7% while Bell Atlantic's was 0.7%, and even in its worst month, Bell Atlantic only had a rate of 1.26%. April 26, 2000, Supplemental Comments of AT&T Corp., p. 37; April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 19.

<sup>48</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 23.

<sup>49</sup> *Id.*

considered individually is reason enough to deny its application; when considered in concert they are even more damning to its application.

## **II. THE COMMISSION SHOULD NOT LOWER ITS STANDARD FOR HOT CUTS**

This Commission has held that the standard it set for hot cuts in the *Bell Atlantic New York Order* constituted the “minimally acceptable” showing, and that it would have serious concerns if the level of performance in any of the three measures were to decline.<sup>50</sup> The Commission based its approval of Bell Atlantic not merely on the existence of compliant data, but also the fact that the data was corroborated by a truly independent third party and a thorough reconciliation performed by the New York Public Service Commission.<sup>51</sup> The Commission accepted Bell Atlantic’s performance despite CLEC arguments that the standard for hot cuts should be that the BOC provide CLECs with the fewest number of outages and best on-time performance that is technically feasible and commercially reasonable for the BOC to achieve.<sup>52</sup> The standards in the *Bell Atlantic New York Order* already constituted a departure from performance standards that the New York Public Service Commission, and Bell Atlantic itself,

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<sup>50</sup> *Bell Atlantic New York Order* at ¶ 309.

<sup>51</sup> *Bell Atlantic New York Order* at ¶ 307. SBC’s data is only now being reconciled, and it still being updated by SBC. SBC’s application in regard to hot cuts is not nearly as evolved or as developed as Bell Atlantic’s application was when the Commission issued its Section 271 grant.

<sup>52</sup> See Brief for AT&T, *et al.*, *AT&T v. FCC*, No. 99-1538 (D.C.Cir. filed January 27, 2000).

felt were capable of being achieved.<sup>53</sup> AT&T astutely observes that SBC has every incentive to perform down to the standard, *i.e.*, allow as many outages as it can consistent with regulatory requirements.<sup>54</sup> SBC is not performing hot cuts at the level of performance it is capable of, but is instead trying to come within the ballpark of the Commission's standards and ask for approval.<sup>55</sup> The Texas PUC, recognizing the flawed hot cut performance of SBC, urges this Commission to refrain from "outright application" of the *Bell Atlantic New York Order* hot cuts standards. This appears to be another way of saying while SBC is not meeting the standard, please excuse the failure, and grant it the Section 271 authority.

The Commission should not lower the bar any more in regard to hot cut performance. The one true incentive for hot cut performance is the Section 271 grant. For the carrier that garners Section 271 approval, incentive for performance is lost. An indication of this is the fines

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<sup>53</sup> *Id.* at p. 48. For instance, the NY PSC had set a minimum standard of 95 percent on-time performance, not the 90% standard eventually established. *Bell Atlantic New York Order* at ¶ 292.

<sup>54</sup> April 26, 2000 Supplemental Comments of AT&T Corp., p. 28.

<sup>55</sup> The Texas PUC continually states SBC's performance is improving. *See, e.g.*, April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 21. This shows that SBC is capable of doing more, and while improvement is a good thing, when its performance is still below performance standards, the solution is not to lower the bar to meet it, but to require it to keep improving. Moreover, SBC keeps giving excuses for why its performance is deficient. *See, e.g.* Conway/Dysart Supp. Aff. ¶¶ 29-34. Thus, SBC clearly feels it is capable of doing better and it should establish that it can, in fact, do better before getting its grant.

Bell Atlantic has incurred after its Section 271 grant.<sup>56</sup> Fines do not, however, guarantee performance, as SBC is subject to pay damages under PM 114.1 based on the number of lines missed, but is still failing to meet the performance standard.<sup>57</sup> If this Commission lowers the standard for hot cut performance, it rewards SBC for underperforming, and it gives incentive to other RBOCs to push the envelope and try to lower the standards even more. The FCC has recognized that hot cut performance is vital not only to competitive carriers, but the public at large because failure in this area leads to loss of, or disruption to, service.<sup>58</sup> The one incentive for hot cut performance is the Section 271 grant, and the FCC should ensure that standards in this area remain meaningful.

### **III. THE FCC SHOULD REFRAIN FROM USE OF STATE-SPECIFIC STANDARDS**

The Texas PUC argues that performance measures are not “one size fits all” and what works in New York may not work in Texas.<sup>59</sup> This appears to be shorthand for requesting implementation of state-specific hot cut standards. Neither SBC, nor the Texas PUC, has shown

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<sup>56</sup> *In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085 (March 9, 2000)(Bell Atlantic agreed to make a voluntary payment of \$3 million, with additional liability of up to \$24 million in relation to Bell Atlantic’s loss or mishandling of orders submitted by its local service competitors.)

<sup>57</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 15.

<sup>58</sup> *Bell Atlantic New York Order* at ¶ 309.

<sup>59</sup> April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 3.

any justification for applying state-specific standards.<sup>60</sup> In fact, the application of state-specific standards for hot cuts would be detrimental to ensuring a uniform level of competence in regard to hot cut performance by the RBOCs.

The Texas PUC is correct in noting that the FCC has never promulgated a rule on the appropriate performance measures for hot cuts and that many state commissions did not have the benefit of the guidance provided by *Bell Atlantic New York Order* at the time they set their performance measures. The Commission has, however, now articulated a standard for hot cut performance and it should establish that this standard will apply to the consideration of hot cut performance in the future regardless of the state or region at issue.<sup>61</sup> The Texas PUC is right in recognizing that states will be reluctant to develop performance measures if those measures are trumped by “constantly evolving standards set by other tribunals.” The solution, however, is not to allow each state to have their own measures, but for the FCC to set a national standard for hot cut performance and to require all Section 271 applications to be judged by this standard.

The danger of a state-specific approach is seen in this proceeding where there seems to be almost as many standards as there is data. This overabundance of standards makes evaluation and comparison of data very difficult as the Texas PUC admits. It also makes comparison to the

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<sup>60</sup> Ironically, SBC, as shown *supra*, is not meeting the TX PUC benchmarks, so use of state-specific standards would provide no benefit to SBC’s application.

<sup>61</sup> In fact, as many CLECs urge, and as argued *supra*, the Commission should raise the level of what is “minimally acceptable” to comply with what is technically feasible and commercially reasonable for the RBOC to perform.

baseline set in the *Bell Atlantic New York Order* very difficult. Only in the most recent round of data has SBC disaggregated the data such that the parties in the proceeding can now determine, for instance, how many orders of 10 lines or fewer are cutover within an hour.

An overabundance of standards lays the seeds for confusion and sleights of hand in regard to what the data shows. SBC has been arguing that it meets performance standards in regard to hot cuts but only by using a “mix and match” approach to the standards. For instance, it wants the Commission to use the TX PUC’s two hour completion interval, but not the 100% on-time performance standard for that interval. Instead, it seeks to continue use of the 90% standard that Bell Atlantic used coupled with the much longer time frame.<sup>62</sup> No wonder it then argues that it is “meeting” performance standards.

State performance metrics are useful in evaluating applications, and no one is arguing that such metrics should not be utilized, but there is no reason for this Commission to refrain from applying the “minimally acceptable” standards it set in the *Bell Atlantic New York Order*. Different nomenclature may be used in the varying standards, but they all measure the same thing, the quality and quantity of hot cut provisioning. A hot cut in Texas is the same as a hot cut in New York, and no indication has been given why they should be treated differently, or why one size would not fit all in this context.

Utilizing a state-specific approach creates a danger of further dilution of hot cut standards. For instance, TX PUC performance standards are based on two hour completion

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<sup>62</sup> April 26, 2000 Supplemental Comments of AT&T Corp., p. 36.

intervals and orders of 1-24 lines. But most orders are for fewer than 10 lines, and on average are for fewer than five loops.<sup>63</sup> Orders for 20 or more loops are very rare, yet the Texas PUC uses the time it would take to cutover a 24 loop order as the basis of its performance standard for cutover intervals.<sup>64</sup> Thus, it sets a two hour time frame for cutovers which may seem appropriate for orders of over 24 lines, but would be much too long for the vast majority of orders. There is no need for state-specific standards and use of such standards can only cloud the issue.

SBC has shown that it can disaggregate its data such that an evaluation can be made under the same standards utilized in the *Bell Atlantic New York Order*, and the Texas PUC spends much of its analysis reflecting the data through the standards of the *Bell Atlantic New York Order*. Thus, there is no reason to use state-specific standards. The Commission should unequivocally reject any overtures to refrain from the “outright application” of standards it has set for hot cuts, and it should refrain from allowing any use of state-specific metrics to dilute the standards for hot cuts.

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*



**CONCLUSION**

SBC's repeated attempts to show adequate hot cut performance all end up in the same location, i.e, below the bar set by the Commission in the *Bell Atlantic New York Order*. If the Commission grants this application it would be lowering the bar in vital areas of local competition and imperiling both local and long distance competition in the state of Texas. For the foregoing reasons, the Commission should deny the SBC Application.

Respectfully submitted,



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Dated: May 19, 2000

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**CERTIFICATE OF SERVICE**

I, Harisha Bastiampillai, hereby certify that on May 19, 2000, I caused to be served upon the following individuals the Reply Comments of RCN Telecom Services, Inc. in CC Docket 00-65:

  
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